

<p align="center">DEPARTMENT FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES</p> <p align="center">STANDARDS OF OPERATIONS</p>	Policy Number DMHMRS 02-03	Total Pages 5
	Date Issued April 14, 2003	Effective Date April 14, 2003
References KRS 210.220 § 164.306, 164.522, 164.526, 164.528	Subject Individual Rights	

Statement of Policy and Purpose

It shall be the policy of the Department for Mental Health and Mental Retardation Services (DMHMRS) to maintain and uphold the rights of personnel, volunteers and individual clients with regard to personal information, programs and services.

Procedure

A. Rights to Restrictions of Protected Health Information (PHI).

1. When applicable to any DMHMRS program with direct care, treatment or service, an individual shall have the right to request restrictions on uses or disclosures of PHI with regards to treatment, payment or health care operations.
2. DMHMRS is not required to agree to a requested restriction.
3. DMHMRS may not use or disclose PHI upon agreement to a restriction.
(EXCEPTION: The individual requesting the restriction is in need of emergency treatment and the requested PHI is needed to provide the emergency treatment.)
4. When restricted PHI is disclosed to an emergency treatment provider by DMHMRS, it shall be the responsibility of DMHMRS to inform the provider of the restriction.
5. DMHMRS may terminate an agreement to a restriction of PHI. The termination procedures shall be as follows:
 - a. The individual agrees to or requests the termination in writing.
 - b. DMHMRS informs the individual and documents the termination of the agreed restriction.

B. Rights of Confidential Communication of PHI

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1. DMHMRS shall accommodate any reasonable request, by the individual, to receive communications of PHI maintained by DMHMRS. The request may include communication by alternative means or locations. Conditions of communication may include:

- a. The request be in writing.
- b. Method of payment.
- c. Specifications of alternative address or other method of contact.

C. Rights of Amendments to PHI

1. DMHMRS shall provide the opportunity for an individual to amend PHI, or a record about the individual in a designated record set, when maintained by DMHMRS. Requirements for amendments may include:

- a. The request be in writing and include a reason for the requested amendment.
- b. Completion of an amendment be no later than sixty (60) days after receipt of request unless the individual has been provided a written statement regarding the reason for delay with a projected date of completion.
- b. Upon acceptance of the requested amendment, DMHMRS shall:
 1. Make the appropriate amendment to the PHI or record by identifying the records affected by the amendment.
 2. Inform the individual that the amendment is accepted and obtain the individual's agreement to notify relevant person(s) with which the amendment should be shared.
 3. Make reasonable efforts to inform and provide the amendment to person(s) identified by the individual or DMHMRS, including business associates, known to have the PHI that is the subject of the amendment.

2. DMHMRS may deny, in writing, a request for amendment to PHI or a record if it is determined:

- a. It was not created by DMHMRS.
- b. It is not part of the designated record set identified by the request.

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- c. Would not be available for inspection under federal or state law.
 - d. It is found to be accurate and complete.
3. DMHMRS, when denying an amendment request, shall:
- a. Provide, in plain language, a timely written denial.
 - b. Provide a basis for the denial.
 - c. Advise the individual, requesting the amendment, of the right and process to submit a written statement disagreeing with the denial. (DMHMRS may provide a written rebuttal to the disagreement).
 - d. Include a statement that, if the individual does not submit a written disagreement, the individual may request DMHMRS provide the request and denial with any future disclosures of the PHI that is the subject of the amendment.
 - e. Include a description of the complaint procedure to DMHMRS, the Secretary including the name or title and telephone number of the contact person or designated office.
 - f. Identify the record or PHI that is the subject of the disputed amendment and append or otherwise link the request, the denial, the statement of disagreement (if any) and the rebuttal (if any) to the designated record set.

D. Right to an Accounting of PHI

- 1. DMHMRS shall provide the opportunity for an individual to request and receive an accounting of disclosures of PHI or records maintained by DMHMRS. PHI that is the subject of the request may be up to six (6) years prior to the date of the request, except for disclosures:
 - a. To carry out treatment, payment and health care operations.
 - b. For national security or intelligence purposes.
 - c. That occurred prior to the compliance date.
- 2. DMHMRS shall temporarily suspend the right to receive an accounting of disclosures to a health oversight agency or law enforcement official, for the time specified by such agency or official if DMHMRS is provided a written statement that such an accounting would be reasonably likely to impede the agency or

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official's activities and specifying the time for which such a suspension is required. If the agency or official statement is made orally, DMHMRS shall

- a. Document the statement.
 - b. Temporarily suspend the individual's right to accounting of disclosures.
 - c. Limit the temporary suspension to no longer than thirty (30) days.
3. The content of the accounting must include disclosures of PHI that occurred during the six (6) years prior to the date of the request. EXCEPTION: The request is made for a shorter time period. Additionally, the accounting shall include:
- a. The date of the disclosure.
 - b. The name of the entity or person who received the PHI and, if known, the address.
 - c. A description of the PHI disclosed.
 - d. A statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure unless there is a copy of the individual's written authorization or a copy of the individual's written request for disclosure.
4. DMHMRS shall act on the request for an accounting within sixty (60) days after receipt of the request. A thirty (30) day extension may be granted to DMHMRS one time for action on a request.
- a. DMHMRS, when necessary, shall provide a written statement of the reasons for any delay and the date by which DMHMRS shall provide the accounting.
 - b. DMHMRS shall provide the first accounting in any twelve (12) month period without charge. The same individual may assess a reasonable cost-based fee for each subsequent request within the twelve (12) month period. To impose a fee, DMHMRS shall:
 1. Inform the individual in advance of the fee.
 2. Provide the individual an opportunity to withdraw or modify the

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request for a subsequent accounting in order to avoid or reduce the fee.

5. DMHMRS shall document and retain all documentation required for an accounting of disclosures of PHI. The documentation shall include:
 - a. Information required to be included in an accounting for disclosures of PHI, which are subject to an accounting.
 - b. The written accounting provided to the requesting individual.
 - c. The titles of the person(s) or offices responsible for receiving and processing requests for an accounting.

E. Right of Complaints

1. Any person who believes DMHMRS or one of its business associates is not in compliance with the requirements of privacy, shall have the right, in accordance with DMHMRS 02-01, to file a complaint without fear of retaliation. A complaint shall:
 - a. Be filed in writing, either paper or electronically.
 - b. Name the entity or person(s) that is the subject of the complaint and describe the acts or omissions believed to be in violation.
 - c. Be filed within 180 days of when the complainant knew or should have known of the act or omission. (The Secretary may waive the time limit for good cause).

F. This policy shall be reviewed and revised as necessary.